

**Office of Chief Counsel
Internal Revenue Service
memorandum**

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date: September 20, 2013

to: Senior Attorney (Atlanta)
(Large Business & International)

from: Branch Chief, Branch 1
(Procedure & Administration)

subject: Applying the "Look-Back Period" under Section 6511(c)(2) to Refund Claims when there are Multiple Section 6501(c)(4) Extensions by Agreement

This Chief Counsel Advice responds to your request for assistance in determining the applicable limits on refunds under section 6511(c)(2) when the taxpayer and the Service have extended the assessment statute using multiple Forms 872.¹ This advice may not be used or cited as precedent.

ADVICE

Section 6511 covers the period of limitations on credits or refunds. Generally, a taxpayer has 3 years from the time he filed a tax return or 2 years from when he paid the tax, whichever is later, to file a refund claim. When the taxpayer and the Secretary agree to extend the time for assessment under the provisions of § 6501(c)(4), the taxpayer's time to file a refund claim is essentially extended to 6 months after the agreed-upon assessment statute expires. In these circumstances, the amount of tax that can be refunded to the taxpayer is limited to:

- payments made between the time the agreement was executed and the filing of the refund claim, and

¹ For example, when a Form 872 is executed extending the time to assess to a certain date, and then, before that date expires, the taxpayer signs another Form 872, further extending the time to assess to a later date.

- payments that would have been available under § 6511(b)(2) had the claim been filed on the date the *first* agreement to extend the time to assess the tax was executed. See *Estate of Wheeler v. Commissioner*, T.C. Memo. 1979-321.

Interpreting “agreement” as the *last* extension agreement would punish the taxpayer for having agreed to additional extensions in that the amount of his refund may be limited by section 6511(c)(2). Furthermore, using the last agreement could easily result in disparate treatment. For example, if two unrelated taxpayers both agreed to extend the assessment period on their 2009 tax year to 2015, and one accomplished this by executing one Form 872 and the other by executing two, the latter taxpayer, by dint of having executed two agreements rather than one, would have a different look-back period than would have been available had he executed only one Form 872.

CASE DEVELOPMENT, HAZARDS AND OTHER CONSIDERATIONS

This writing may contain privileged information. Any unauthorized disclosure of this writing may undermine our ability to protect the privileged information. If disclosure is determined to be necessary, please contact this office for our views.

Please call Larry Pounders at

if you have any further questions.